

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARIS HERZOG,

*Plaintiff,*

-vs-

VILLAGE OF WINNETKA, ILLINOIS, and  
WINNETKA POLICE OFFICERS  
POWELL and COLLERAN,

*Defendants.*

00C 4439

(jury demand)

JUDGE HIBBLER

MAGISTRATE JUDGE  
GERALDINE SOAT BROWN

DOCKETED

JUL 27 2000

**COMPLAINT**

Plaintiff, by counsel, alleges as follows:

1. This is a civil action arising under 42 U.S.C. §1983. The jurisdiction of this Court is conferred by 28 U.S.C. §1343 and 28 U.S.C. §1367.
2. Plaintiff Maris Herzog is a female resident of the Northern District of Illinois.
3. Defendants Powell and Colleran were all times relevant acting under color of their office as police officers of the Village of Winnetka, Illinois.
4. Defendant Village of Winnetka, Illinois is an Illinois municipal corporation and is joined in this action under the Court's supplemental jurisdiction pursuant to 28 U.S.C. §1367.
5. At about 1:20 a.m. on November 28, 1996, plaintiff, while operating her motor vehicle in a southbound direction on Sheridan Road in the Village of Winnetka, Illinois, was pulled over by defendant Powell, who was

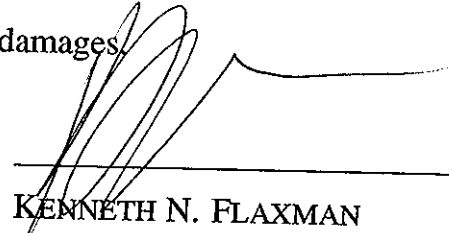
acting under color of her office as a Winnetka police officer.

6. After pulling plaintiff over, defendant Powell was joined by defendant Colleran.
7. While plaintiff was being detained by defendants, defendant Powell inserted a device into plaintiff's mouth, thereby violating rights secured to plaintiff by the Fourth and Fourteenth Amendments to the Constitution of the United States and causing plaintiff to receive personal injuries.
8. Defendants Powell and Colleran caused plaintiff to be formally arrested and transported to the police station, where a breathalyzer test confirmed that plaintiff's blood alcohol level was zero.
9. Defendants Powell and Colleran did not have any lawful basis to cause plaintiff to be formally arrested, transported to the police station, and subjected to a breathalyzer test. In causing plaintiff to be formally arrested, transported to the police station, and subjected to a breathalyzer test, defendants Powell and Colleran caused plaintiff to be deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States and caused plaintiff to be deprived of her liberty, embarrassed, humiliated, and subjected to extreme emotional distress.
10. After the breathalyzer confirmed that plaintiff was not under the influence of alcohol, defendant Powell caused plaintiff to be transported (in handcuffs) to a hospital, where plaintiff was required to submit to blood and urine tests.

11. In causing plaintiff to be transported to the hospital and subjected to blood and urine tests, defendant Powell caused plaintiff to be deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States and caused plaintiff to be deprived of her liberty, embarrassed, humiliated, and subjected to extreme emotional distress.
12. The results of the blood and urine tests confirmed that plaintiff had not been under the influence of any controlled substance.
13. All charges against plaintiff were dropped at her initial court appearance after the prosecutor recognized that plaintiff was not guilty of any offense.
14. The actions of defendants Powell and Colleran in causing plaintiff to be charged with driving while under the influence where undertaken in the course of their employment as employees of the Village of Winnetka and constitute the Illinois tort of malicious prosecution.
15. As the direct and proximate result of defendants' wrongful acts, plaintiff was unlawfully arrested, subjected to unconstitutional treatment following her arrest, wrongfully prosecuted with a crime, required to retain counsel, lose wages, suffered damage to her reputation, and incurred severe and extreme emotional distress.
16. Plaintiff hereby demands trial by jury.

WHEREFORE plaintiff prays that judgment be entered against defendant Powell in an amount in excess of one hundred thousand dollars as compensatory damages and twenty five thousand dollars as punitive damages, against

defendant Colleran in an amount in excess of fifty thousand dollars as compensatory damages, and against the Village of Winnetka in an amount in excess of fifty thousand dollars as compensatory damages.



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KENNETH N. FLAXMAN  
122 South Michigan Avenue  
Suite 1850  
Chicago, Illinois 60603  
(312) 427-3200  
*attorney for plaintiff*

JS 44  
(Rev. 12/96)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

MARIS HERZOG

DOCKETED  
JUL 27 2000

## DEFENDANTS

VILLAGE OF WINNETKA, ILLINOIS, and  
WINNETKA POLICE OFFICERS POWELL and  
COLLEA

00C 4439

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cook  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Cook  
(IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kenneth N. Flaxman  
122 S Michigan Ave., Suite 1850  
Chicago, Illinois 60603  
(312) 427-3200MAGISTRATE JUDGE  
GERALDINE SOAT BROWN

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities, Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405gii) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405gii)  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 USC § 1983: unlawful arrest and search

## VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐DEMAND \$ 100,000CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ YES ☐ NO

## VIII. This case

- ☒ is not a refiling of a previously dismissed action.
- ☐ is a refiling of case number \_\_\_\_\_, previously dismissed by Judge \_\_\_\_\_

DATE

7/21/00

SIGNATURE OF ATTORNEY OF RECORD

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF ILLINOIS**

In the Matter of  
 MARIS HERZOG, Plaintiff  
 vs.  
 VILLAGE OF WINNETKA, IL, et al.  
 Defendants.

**DOCKETED**  
**JUL 27 2000**

**00C**  
 Case Number.

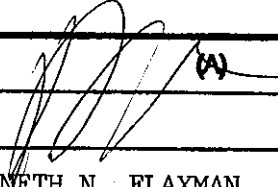
**4439**

FILED-EDS  
 JUL 21 PM 3:01  
 CLERK COURT  
 U.S. DISTRICT COURT

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Maris Herzog, plaintiff

**JUDGE HIRDLER**

 (A)		MAGISTRATE JUDGE GERALDINE SOAT BROWN (B)	
SIGNATURE		SIGNATURE	
NAME	KENNETH N. FLAXMAN	NAME	
FIRM	Kenneth N. Flaxman PC	FIRM	
STREET ADDRESS	122 South Michigan Ave., Suite 1850	STREET ADDRESS	
CITY/STATE/ZIP	Chicago, Illinois 60603	CITY/STATE/ZIP	
TELEPHONE NUMBER	(312) 427-3200	TELEPHONE NUMBER	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	00830399	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER		TELEPHONE NUMBER	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

PLEASE COMPLETE IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE.